No. 32

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In the Supreme Court of the United States

OCTOBER TERM, 1955

JOHN MICHEL, PETITIONER,

vs.

STATE OF LOUISIANA

On Writ of Certiorari to the Supreme Court of the State of Louisiana.

BRIEF ON BEHALF OF THE STATE OF LOUISIANA.

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STATEMENT OF ISSUES

May it please the Court:

The facts of this case are succinctly stated by the Supreme Court of Louisiana in the opinion which is reproduced at pages 45-57 of the record. As the opinion well illustrates, the State's case against petitioner on its merits was very strong. In fact, the State produced the direct testimony of two eye-witnesses to the crime, strong and

plentiful corroborative evidence, and a free and voluntary confession by petitioner. This is, thus, not a situation where constitutional rights were violated to strengthen a weak case.

On February 13, 1953, petitioner, a Negro, was indicted for aggravated rape by the grand jury for the Parish of Orleans, which was empaneled to serve from September 2, 1952 to March 2, 1953. (R. 1-2.). On the same day upon which the term of the grand jury ended, to wit; March 2, 1953, the court appointed counsel to represent petitioner. (R. 3.). Although some attempt is made by counsel for petitioner in his brief to show that he was not appointed on this date, there actually is no doubt about it. The minutes of the court evidence the appointment (R. 3); the evidence taken on the question shows it clearly; (R. 30-37), the per curiam of the lower court is unequivocal on the point (R. 40); and the Supreme Court of Louisiana recognized the appointment as having been made on March 2, 1953. (R. 47).

On March 9, 1953, petitioner filed a motion to quash the indictment on the ground that he was deprived of due process and of equal protection of the law because there had been systematic exclusion of Negroes from the grand jury which indicted him. (R. 15-16). The State filed an answer and demurrer to this motion to quash on the ground that it had not been filed within the

time limit established for filing such pleas by the law of Louisiana (R. 17). The trial court sustained the demurrer (R. 18), and this ruling was affirmed by the Supreme Court of Louisiana. (R. 46-48).

It is important to note at this point that the only matter at issue and passed upon by the Louisiana courts was whether petitioner's motion to quash was filed timely. The Louisiana courts did not and could not as the issues were presented, pass upon the question of whether there had been in fact systematic exclusion of Negroes from the grand jury. That question was never before the Louisiana courts, and it is not now before this Court.

Thus, the only issue before this Court is whether the Louisiana procedural statute which requires a motion to quash an indictment on the ground of the illegality of a grand jury to be filed within a definite time limitation violates any federal constitutional right of petitioner.

ARGUMENT

I.

The Louisiana law which provides a time limitation for filling objections to the manner of selecting a grand jury does not violate any federal constitutional provision. La. Rev. Stat. 15:202 and the Wilson case.

In 1928 Louisiana adopted a comprehensive Code of Criminal Procedure. This Code was re-enacted verbatim by the Legislature of Louisiana in 1950 in a general revision of the Louisiana statutes. The 1928 Code became Title 15 of the Louisiana Revised Statutes of 1950. Articles 202 of this Code (or R.S. 15:202) provides as follows:

> "§ 202. TIME FOR URGING OBJECTIONS TO ARRAY: WAIVER
>
> All objections to the manner of selecting or drawing any juror or jury or to any defect or irregularity that can be pleaded against any array or venire must be filed, pleaded, heard or urged before the expiration of the third judicial day of the term for which said jury shall have been drawn, or before entering upon the trial of the case if it be begun sooner; otherwise, all such objections shall be considered as waived and shall not afterwards be urged or heard."

It should be noted that while this section does not specifically refer to grand juries, it is contained in a Part of the Code entitled "Grand and Petit Juries". It is thus clear that Article 202 by inclusion in a Part so entitled, deals with both grand and petit juries. As will be seen hereafter, this has always been the interpretation placed upon it by the courts of Louisiana.

In 1943, the Supreme Court of Louisiana, in a case identical in every respect with the instant

case, interpreted Article 202 to mean that an accused could file attacks upon the grand jury only until the third judicial day after the *end* of the grand jury term. *State v. Wilson*, 204 La. 24, 14 S. (2d) 873 (1943), 320 U.S. 714.

In the instant case, the motion to quash was not filed until March 9, 1953, or seven days after the end of the grand jury term, which ended March 2, 1953. Thus it is clear that petitioner filed his pleading too late, and the Supreme Court of Louisiana so held, affirming the *Wilson* case.

Before discussing the constitutional validity of the *Wilson* doctrine, which was affirmed and applied in the instant case by the Louisiana courts, it is well to note a few matters about the *Wilson* case.

1. The Supreme Court of Louisiana in the *Wilson* case clearly recognized that Article 202 as applicable to grand juries should be interpreted to allow an accused three days after the *end* of the grand jury term, because if the time limitation should be interpreted to mean three days after the *beginning* of the six months term of the grand jury, no opportunity to make an attack upon the grand jury would be afforded those persons who were indicted after these three days had elapsed. Thus the Supreme Court of Louisiana recognized the principle that a defendant is entitled to a reasonable time within which to raise federal con-

stitutional questions, and interpreted Article 202 so as to provide such a period.

2. The Supreme Court of the United States granted an appeal in the *Wilson* case, but *thereafter dismissed the appeal in a per curiam reading as follows:*

> "The motion to dismiss is granted and the appeal is dismissed, it appearing that the decision is based upon a non-federal ground adequate to support it." See *Wilson v. Louisiana*, 320 U.S. 714, 64 Sup. Ct. 257, 88 L.Ed. 419 (1943).

Thus, this Court has already passed upon the *precise issue* involved in this case, and has approved the *Wilson* doctrine. Acting under the *Wilson* decision as approved by this Court, the Louisiana Supreme Court held that the motion to quash in the instant case was filed too late. Under the rule announced by the United States Supreme Court in the *Wilson* case, the decision of the Louisiana Supreme Court in the instant case should be affirmed; being "based upon a non-federal ground adequate to support it". The United States Supreme Court is without power to decide whether constitutional rights have been violated when the federal questions are not seasonably raised in accordance with state law. *Edelman v. California*, 344 U. S. 357, 73 Sup. Ct. 293, 97 L.Ed. 387 (1953).

II.

Federal courts, as a general rule, must accept the interpretation placed upon state statutes by state courts.

It is a well-established principle that federal courts must accept the meaning and interpretation placed on a state statute by state courts. The United States Supreme Court has always insisted that state courts be permitted to decide questions of state law, and has even had federal courts decline jurisdiction to await a ruling from a state court. Cf. *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 Sup. Ct. 1098, 87 L.Ed. 1424 (1943); *Williams v. Kaiser*, 323 U.S. 471, 65 Sup. Ct. 363, 89 L.Ed. 398 (1945).

This doctrine does not prevent the Supreme Court of the United States from determining whether the statute *as so interpreted*, violates a federal constitutional privilege. But it does mean that the Supreme Court of the United States will not undertake to place an interpretation upon a state statute different from that given it by the state courts, even though it might not agree with the interpretation. It has been recognized that the only instance in which this general rule will not be applied is where the circumstances give rise to an inference that the state court is guilty of an "evasion"—an interpretation of state law with the specific intent to deprive a litigant of a federal

right. See *Williams v. Georgia*, 349 U.S. 375 at 399, 75 Sup. Ct. 814, 99 L.Ed. advance p. 703 (1955).

III.

The Wilson doctrine is not an "evasion" to deprive petitioner of a federal right.

Petitioner argues that the *Wilson* doctrine is a prohibited "evasion" within the intendment of the rule stated above. This is based on the theory that Article 202 does not mean what the Supreme Court of Louisiana says it means. It should be remembered that the *Wilson* doctrine was not developed for the instant case but has been the law of Louisiana since the *Wilson* decision was approved by this Court thirteen years ago. The Supreme Court of Louisiana adhered to its prior interpretation of Article 202 in this case and its companion case, *State v. Labat and Poret*, and also in a later case, *State v. Chianelli*, 226 La. 552, 76 (S2d) 727 (1954).

It is significant also, as pointed out by the Louisiana Supreme Court in its opinion in this case (R. 47), that the Louisiana Legislature has met many times since the *Wilson* doctrine was enunciated. Not only has the Legislature not changed the *Wilson* doctrine, but it has approved it by reenacting Article 202 of the Criminal Code without change in 1950 as Section 202 of Title 15 of the Lousiana Revised Statutes.

It is clear from the reasoning of the opinion in the *Wilson* case that the Court was not attempting to "evade". In fact quite the contrary is evident. The Louisiana Supreme Court in the *Wilson* case interpreted Article 202 in the most liberal manner possible, permitting a defendant to attack the grand jury until three days after the *end* of the grand jury term instead of three days after the *beginning* thereof. The effect of the decision is to give a defendant more time, not less time, to raise federal questions. In fact, the meticulous concern of the Louisiana Supreme Court for the protection of federal rights is the central theme of the decision. For example, the following language from the opinion in *Wilson* on rehearing is significant:

> ". . . Obviously, under the construction requiring the filing of the motion to quash within three judicial days after the Grand Jury is drawn, the defendant would not be afforded an opportunity, through proper pleadings, to challenge the legality of the drawing and selecting of the jury, the array or venire. Therefore, this Court, by giving Article 202 such construction would unquestionably make its provisions unconstitutional under our State and Federal Constitutions because of a denial of due process of law.
>
> "While the constitutionality of Article 202 of the Code of Criminal Procedure is not attacked in this case, it is clear that its provisions apply to all persons charged with

crime regardless of color, race, or previous condition of servitude and, therefore, it does not conflict with the provisions of the articles of the State and Federal Constitutions guaranteeing persons the equal protection of the law. Neither does the constuction which we have placed upon its provisions in the majority opinion deny to any person charged with Violating a criminal law, the equal protection of the law because of race, color, or previous condition of servitude. The interpretation which we have placed upon the statute is in keeping with our previous holdings, in cases where persons of the white race were tried for criminal offenses and failed to comply with the provisions of Article 202 of the Code of Criminal Procedure in attacking the legality of the drawing and selecting of the Grand Jury, that the plea came too late and would not be considered." *State v. Wilson*, 204 La. 24, at 75-76, 14 S. (2d) 873 (1943).

In *State v. Chianelli*, supra, decided after the instant case, this concern about federal rights was again expressed by the Supreme Court of Louisiana in these words:

"We are conscious of the fact that under the interpretation given to Article 202 by the Wilson case and others following it an accused can indefinitely delay the trial of his case by waiting until the date fixed for trial to object to the petit jury array or venire. However, to avoid these unnecessary delays Article 202 of the Code of Criminal Proce-